

# ***2010 Data Protection Seminar***

***TMA Privacy Office***



## **Applying the Freedom of Information Act**



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## Applying the Freedom of Information Act

# Purpose

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- Provide an overview of the Freedom of Information Act (FOIA), FOIA regulations, and FOIA exemptions
- Explain TRICARE Management Activity's (TMA) role in implementing FOIA regulations and increasing the Federal Government's openness and transparency



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## Applying the Freedom of Information Act

# Objectives

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- Upon completion of this presentation, you should be able to:
  - Comply with the FOIA statute and apply DoD FOIA policy to facilitate the Open Government Initiative
  - Understand how to mitigate risks and penalties associated with the timely and accurate response of FOIA requests



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## Applying the Freedom of Information Act

# What is FOIA?

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- FOIA is a law that ensures public access to United States government records
  - FOIA requires agencies make records available to the public unless one of the nine exemptions or one of the three law enforcement exclusions under the Act applies to a particular request
  - FOIA applies to federal agencies and does not create a right of access to records held by Congress, the courts, or by state or local government agencies
  - Each federal agency is responsible for meeting its FOIA obligations



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# Federal Statutes and Regulations

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- FOIA enacted in 1966 (5 U.S.C. § 552) and amended several times
- Openness Promotes Effectiveness in our National (OPEN) Government Act of 2007
- President Barack Obama signed two Presidential Memoranda and an Executive Order regarding FOIA and transparency, January 21, 2009
- Attorney General Eric Holder issued a Memorandum directing all Executive Branch departments and agencies to apply a presumption of openness for FOIA, March 15, 2009
- OPEN FOIA Act of 2009: Affects change to Exemption 3 regarding withholding specifically exempt information from disclosure by statute



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## DoD Statutes and Regulations

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- The following DoD policies support the Federal Government's FOIA program:
  - DoD Regulation 5400.7-R, "DoD Freedom of Information Act Program"
  - DoD Directive 5400.07, "DoD Freedom of Information Act Program"



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# FOIA Exemptions

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- TMA may apply one or more of the following exemptions when determining the release of information:
  - (b)(2): **CIRCUMVENTION** – Applies to information that pertains solely to the internal rules and practices of the agency; if document is released, it would allow circumvention of an agency rule, policy, or statute, thereby impeding the agency in the conduct of its mission
  - (b)(3): **STATUTORY** – Applies to information specifically exempted by a statute establishing particular criteria for withholding; the language of the statute must clearly state that the information will not be disclosed



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# FOIA Exemptions (continued)

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- Exemptions continued:

- (b)(4): **PROPRIETARY** – Applies to information such as trade secrets and commercial and financial information obtained from a person on a privileged or confidential basis which, if released, would result in competitive harm to the company
- (b)(5): **PRIVILEGED** – Applies to inter- and intra-agency memoranda which are deliberative in nature; for internal documents which are part of the decision making process, and contain subjective evaluations, opinions and recommendations
- (b)(6): **PRIVATE** – Applies to information, which, if released, would constitute a clearly unwarranted invasion of the personal privacy of individuals



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# FOIA Exemptions (continued)

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- Exemptions continued:

- (b)(7): **LAW ENFORCEMENT** – Applies to records or information compiled for law enforcement purposes that (A) could reasonably be expected to interfere with law enforcement proceedings; (B) would deprive a person of a right to a fair trial or impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of others; (D) disclose the identity of a confidential source; (E) disclose investigative techniques and procedures; or (F) could reasonably be expected to endanger the life or physical safety of any individual



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## Open Government Initiative

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- President Obama and the Office of Management and Budget launched the Open Government Initiative on December 8, 2009
  - Objective: To support a more transparent, participative, and collaborative Federal Government
  - Plan of Action: Implement the Open Government Directive requiring each agency to support the Federal Government's presumption of openness



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## Open Government Initiative (continued)

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- Open Government Cornerstones:
  - Transparency: Promotes accountability by providing the public with information about what the government is doing
  - Participation: Allows members of the public to contribute ideas and expertise so that their government can make policies with the benefit of information that is widely dispersed in society
  - Collaboration: Improves the effectiveness of government by encouraging partnerships and cooperation within the Federal Government, across levels of government, and between the government and private institutions



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# Open Government Initiative (continued)

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- The Open Government Directive requires that each agency:
  - Publish Government Information Online: Proactively expand access to information by making it available online in open formats, rather than waiting for specific requests under FOIA; reduce FOIA backlog by 10% each year
  - Improve the Quality of Government Information: Designate a high-level senior official to be accountable for the quality and objectivity of, and internal controls over, the federal spending information publicly disseminated



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# Open Government Initiative (continued)

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- The Open Government Directive requires that each agency (continued):
  - Create and Institutionalize a Culture of Open Government: Coordinate efforts to implement existing mandates for federal spending transparency and provide a forum to share best practices on innovative ideas to promote participation and collaboration
  - Create an Enabling Policy Framework for Open Government: Identify impediments to open government and to the use of new technologies and clarify guidance and/or propose revisions to such policies to promote greater openness in government



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# TMA and FOIA Requests

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- Each TMA office appointed a FOIA point of contact (POC) for its respective office who is responsible for:
  - Ensuring that the Federal Government actualizes FOIA and related directives, including the timely response to all FOIA requests
  - Mitigating the risks and penalties associated with the lack of communication between the government and the people
  - Submitting a completed Action Memorandum package to the TMA FOIA Office with appropriate forms and documents for release



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# FOIA Requests

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- Forward any FOIA requests that come directly to your office to the TMA FOIA Office for proper dispense and coordination with the designated FOIA POC
  - [FOIARequests@tma.osd.mil](mailto:FOIARequests@tma.osd.mil)
  - FOIA requests by individuals for information about themselves are sent to the appropriate Privacy Officer to be processed as a Privacy Act request



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## Applying the Freedom of Information Act

# Summary

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- You should now be able to:
  - Comply with the FOIA statute and apply DoD FOIA policy to facilitate the Open Government Initiative
  - Understand how to mitigate risks and penalties associated with the timely and accurate response of FOIA requests



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## Applying the Freedom of Information Act

# Resources

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- DoD Regulation 5400.7-R, “DoD Freedom of Information Act Program”, September 4, 1998
- “Freedom of Information Act (5 U.S.C. § 552) with Openness Promotes Effectiveness in our National (OPEN) Government Act of 2007”, December 12, 2007
- DoD Directive 5400.07, “DoD Freedom of Information Act Program”, January 2, 2008
- President Memorandum for the Heads of Executive Departments and Agencies – “The Freedom of Information Act”, January 21, 2009



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## Applying the Freedom of Information Act

### **Resources** (continued)

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- Executive Order 13489 – “Presidential Records”, January 21, 2009
- Attorney General Memorandum for the Heads of Executive Departments and Agencies – “The Freedom of Information Act”, March 19, 2009
- To subscribe to the TMA Privacy Office E-News, go to:  
<http://www.tricare.mil/tma/privacy/maillinglist.aspx>
- E-mail [FOIARequests@tma.osd.mil](mailto:FOIARequests@tma.osd.mil) for subject matter questions



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